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LEGISLATIVE COUNCIL
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95TH CONGRESS
1ST SESSION

H. R. 9219

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 20, 1977

Mr. RODINO (by request) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 28 of the United States Code to provide for an exclusive remedy against the United States in suits based upon acts or omissions of United States employees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 1346 (b) of title 28, United States Code, is
4 amended by striking the period at the end of the section
5 and adding the following: “, or where the claim sounding
6 in tort for money damages arises under the Constitution
7 of the United States when such employee of the Government
8 is acting within the scope of his office or employment, or

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1 under the color thereof, such liability to be determined in
2 accordance with applicable Federal law.”.

3 SEC. 2. Section 2672 of title 28, United States Code,
4 is amended by inserting in the first paragraph the following
5 language after the word “occurred” and before the colon:
6 “, or where the claim sounding in tort for money damages
7 arises under the Constitution of the United States when such
8 employee of the Government is acting within the scope of
9 his office or employment, or under the color thereof, such
10 liability to be determined in accordance with applicable
11 Federal law”.

12 SEC. 3. Section 2674 of title 28, United States Code,
13 is amended by (a) inserting in the first paragraph the
14 following language after the word “claims” and before the
15 comma: “based upon negligent or wrongful acts or omis-
16 sions”; and (b) by adding as a third paragraph the
17 following:

18 “The United States shall be liable, respecting the pro-
19 visions of this title relating to tort claims arising under the
20 Constitution of the United States, to the same extent as en-
21 titlement to compensation is recognized under the tort law
22 of the place where the violation occurred, but shall not be
23 liable for interest prior to judgment or for punitive damages:
24 *Provided, however,* That for a claim arising under the Con-
25 stitution of the United States, such compensation shall not

26 be less than liquidated damages of \$1,000, except that for a
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1 claim arising from the interception or disclosure of a wire or
2 oral communication in violation of chapter 119 of title 18,
3 such compensation shall not be less than liquidated damages
4 computed at the rate of \$100 a day for each day of viola-
5 tion or \$1,000 whichever is higher, plus a reasonable at-
6 torney's fee and other litigation costs reasonably incurred:
7 *And provided further,* That without any effect or limitation
8 upon any other defenses, a good faith reliance on a court
9 order or legislative authorization shall constitute a complete
10 defense to any claim or suit arising under the Constitution
11 of the United States, but, notwithstanding the existence of
12 such defense, the United States shall, when it has determined
13 that the officer or employee was acting within the scope of
14 his office or employment or under color thereof, reimburse
15 the person whose constitutional rights were violated for the
16 actual or compensatory damages sustained.”.

17 SEC. 4. Section 2675 (a) of title 28, United States
18 Code, is amended by inserting the following language after
19 “employment,”: “or upon a claim for money damages aris-
20 ing from the violation of the Constitution of the United
21 States by any employee of the Government while acting
22 within the scope of his office or employment or under the
23 color thereof,”.

24 SEC. 5. Section 2679 (b) of title 28, United States
25 Code, is amended to read as follows:

1 “(b) The remedy against the United States provided
2 by sections 1346 (b) and 2672 of this title for claims for in-
3 jury or loss of property or personal injury or death resulting
4 from the negligent or wrongful act or omission of any em-
5 ployee of the Government while acting within the scope of
6 his office or employment or for claims arising from the viola-
7 tion of the Constitution of the United States by any em-
8 ployee of the Government while acting within the scope of
9 his office or employment or while acting under the color
10 thereof is exclusive of any other civil action or proceeding
11 arising out of or relating to the same subject matter against
12 the employee whose violation or act or omission gave rise
13 to the claim, or against the estate of such employee.”.

14 SEC. 6. Section 2679 (d) of title 28, United States
15 Code, is amended to read as follows:

16 “(d) (1) Upon certification by the Attorney General
17 that the defendant employee was acting within the scope of
18 his office or employment, or in claims arising under the
19 Constitution of the United States that the employee was
20 acting within the scope of his office or employment or under
21 the color thereof, at the time of the incident out of which
22 the suit arose any such civil action or proceeding com-
23 menced in a United States district court shall be deemed an
24 action against the United States under the provisions of this
25 title and all references thereto, and the United States shall

1 be substituted as the party defendant. After such substitution
2 the United States shall have available all defenses to which
3 it would have been entitled if the action had originally been
4 commenced against the United States under this chapter
5 and section 1346 (b) .

6 “(2) Upon certification by the Attorney General that
7 the defendant employee was acting within the scope of his
8 office or employment, or in claims arising under the Con-
9 stitution of the United States that the employee was acting
10 within the scope of his office or employment or under the
11 color thereof, at the time of the incident out of which the
12 suit arose any such civil action or proceeding commenced
13 in a State court shall be removed, without bond, at any time
14 before trial, by the Attorney General to the district court
15 of the United States of the district and division embracing
16 the place wherein it is pending and be deemed an action
17 brought against the United States under the provisions of
18 this title and all reference thereto, and the United States
19 shall be substituted as the party defendant. After such sub-
20 stitution the United States shall have available all defenses
21 to which it would have been entitled if the action had orig-
22 inally been commenced against the United States under this
23 chapter and section 1346 (b) . The certification of the Attor-
24 ney General shall conclusively establish scope of office or
25 employment and in claims arising under the Constitution

1 of the United States, acting under color of office or employ-
2 ment for purposes of such initial removal. Should a district
3 court of the United States determine on a hearing on a mo-
4 tion to remand held before trial on the merits that the
5 employee defendant was not acting within the scope of his
6 be remanded to the State court in which it was initially filed.
7 stitution of the United States, acting within the scope of his
8 office or employment or under color thereof, the case shall
9 be remanded to the State court in which it was initially filed.

10 “(3) The provisions of this chapter and section
11 1346 (b) shall not apply in cases where the United States
12 has not waived its sovereign immunity under this chapter.

13 “(4) Where an action or proceeding under this chapter
14 is precluded because of the availability of a remedy through
15 proceedings for compensation or other benefits from the
16 United States as provided by any other law, the action or
17 proceeding shall be dismissed, but in that event the running
18 of any limitation of time for commencing, or filing an
19 application or claim in, such proceeding for compensation
20 or other benefits shall be deemed to have been suspended
21 during the pendency of the civil action or proceeding under
22 this chapter.”.

23 SEC. 7. Section 2679 of title 28, United States Code,
24 is amended by adding a new subsection (f) as follows:

25 “(f) Where an action or proceeding under section

1 1346 (b) or 2672 arising under the Constitution of the
 2 United States results in a judgment against the United States
 3 or an award, compromise, or settlement paid by the United
 4 States, the Attorney General shall forward the matter for
 5 such further administrative investigation or disciplinary
 6 action as may be appropriate to the head of the department
 7 or agency by which the employee whose violation or act or
 8 omission gave rise to the claims was employed.”.

9 SEC. 8. Section 2680 (h) of title 28, United States Code,
 10 is amended to read as follows:

11 “(h) Any claim arising out of libel, slander, misrepre-
 12 sentation, deceit, or interference with contract rights.”.

13 SEC. 9. (a) Subsections (a) through (d) of section
 14 4116 of title 38, United States Code, are repealed, and sub-
 15 section (e) of that section is amended by deletion of the
 16 designation “(e)”, by deleting the words “person to whom
 17 the immunity provisions of this section apply (as described
 18 in subsection (a) of this section),” and inserting in lieu
 19 thereof the words “employee of the Department of Medicine
 20 and Surgery”.

21 (b) Subsections (a) through (e) of section 224 of the
 22 Public Health Service Act, as added by section 4 of the
 23 Act of December 31, 1970, and renumbered (42 U.S.C. 233
 24 (a) through (e)), are repealed, and subsection (f) is
 25 amended by deletion of the designation “(f)”.

1 (c) Subsections (a) through (e) of section 1091 of
2 the Foreign Service Act of 1946, as added by section 119
3 of the Act of July 12, 1976 (22 U.S.C. 817 (a) through
4 (e)), are repealed.

5 (d) Subsection (a) through (e) of section 1089, title
6 10, United States Code, are repealed. Subsection (f) is
7 amended by deleting the words "person described in sub-
8 section (a)" and inserting in lieu thereof the words "em-
9 ployee of the armed forces, the Department of Defense, or
10 the Central Intelligence Agency,".

11 (e) Subsections (a) through (e) of section 307 of the
12 National Aeronautics and Space Act of 1958, as added by
13 section 3 of the Act of October 8, 1976 (42 U.S.C. 2458a
14 (a) through (e)), are repealed, and subsection (f) is
15 amended by the deletion of the designation "(f)", by the
16 deletion of the words "person described in subsection (a)"
17 and by the insertion in lieu thereof of the words "employee
18 of the National Aeronautics and Space Administration".

19 SEC. 10. Section 2520, title 18, United States Code,
20 shall not apply to civil causes of action against officers or
21 employees of the United States while acting within the
22 scope of their office or employment, or while acting under
23 the color of such office or employment.

24 SEC. 11. This Act shall apply to all claims and suits
25 pending on the date of enactment or filed or accruing

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